IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 21ST JUNE 2007 / 31ST JYAISHTA 1929

Bail Appl..No. 3656 of 2007()

CRIME NO.32/05 OF EXCISE RANGE, CHERTHALA
CRMP.1471/2007 of DISTRICT COURT, ALAPPUZHA

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PETITIONERS/ACCUSED

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1. MAHILAMANI, AGED 47 YEARS,
   W/O.PAVITHRAN, CHANIVELIYIL HOUSE,
   MUHAMMA.

2. PAVITHRAN, AGED 57 YEARS,
   S/O.VELU, CHANIVELIYIL HOUSE,
   MUHAMMA.

BY ADV. SRI.M.R.ARUN KUMAR

RESPONDENTS: COMPLAINANT

STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. S.U. NAZAR

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 21/06/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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B.A.No. 3656 of 2007

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Dated this the 21st day of June, 2007

O R D E R

Application for anticipatory bail. The offnece alleged is one punishable under the Abkari Act. The petitioners are spouses, first accused being the wife and the second accused being the husband. The prosecution alleges that 2.5 litres of arrack were seized from a house allegedly in the possession of the petitioners on 2.5.2005. Seizure mahazar was prepared, in which it is seen that the first accused was physically present and the second accused was not present. It is further shown that the ration card of the petitioners bearing No. 1417072117 was perused by the officials which confirms the presence of the petitioners as the house owner and spouse. That number is recorded in the seizure mahazar. The first accused, though available at the premises, could not be arrested for want of woman police constables. Both of them have not been arrested so far eventhough two years have elapsed from the date of the commission of the offence.

2. The learned counsel for the petitioners submits that the allegations are totally false. False allegations have been raised with vexatious intent. A local Excise Guard is ill-disposed to the petitioners and it is he who had engineered this false allegation and persuaded the officials to register a crime at the Excise Range, Cherthala. In these circumstances it is prayed that direction under Section 438 Cr.P.C. may be issued in favour of the petitioners.

3. The learned counsel for the petitioners particularly relies on the copy of the ration card, produced as Annex.A3, which shows that the ration card No. 1417072117 is issued not in respect of House No.5/290 of Muhamma Panchayat, but is issued in respect of House No.3/578 of Muhamma Panchayat. The counsel relies on Annexs. A1 and A2 to show that the petitioners occupy House No.3/578 and some other persons occupy House No.5/290. The learned counsel submits that this discrepancy must convey to the court that the allegations raised are false and vexatious.

4. The learned Prosecutor opposes the application. There are no circumstances justifying invocation of the jurisdiction under Section 438 Cr.P.C., submits the Prosecutor. The innocuous incongruity in the number,

though it is to be probed in detail, cannot give rise to any effective or reasonable suspicion against the case of the prosecution. Obviously the number recorded as the house number which was inspected must be incorrect or not current, it is urged.

5. I shall not go into the details of that dispute at the moment. But I cannot lose sight of the fact that the first accused is said to be present in the house when the seizure was effected. Ration card No. 1417072117, which is admittedly the one issued in favour of the petitioners, was seen by the officials in the house and the number is recorded in the seizure mahazar at the time of seizure. On broad facts also this does not appeal to me as a case where allegations have been raised vexatiously as is evident from the fact that in the crime registered in 2005, the petitioners have not even been arrested so far. I am satisfied that there are no acceptable circumstances justifying the invocation of the extra ordinary equitable discretion under Section 438 Cr.P.C. I am satisfied that this is a fit case where the petitioners must appear before the Investigating Officer or the learned Magistrate having jurisdiction and then seek bail in the regular and ordinary course.

6. This application is accordingly dismissed. I may however hasten

to observe that if the petitioners appear before the learned Magistrate and apply for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass orders on merits, in accordance with law and expeditiously.

(R. BASANT)
Judge

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